



0000108177

Transcript Exhibit(s)

Docket #(s): RR-02635B-09-0529

Exhibit # : A1-A7, S1

Arizona Corporation Commission
DOCKETED

MAR - 2 2010

DOCKETED BY MM

2010 MAR - 21 P 2:00
ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

RECEIVED



EXHIBIT

tables.

A-1

ADMITTED

EXHIBIT A-1

EXHIBIT

tabbies

A-2

ADMITTED



PHOTO #1

Exhibit A-2 NB 91st Ave
South of RR Xing

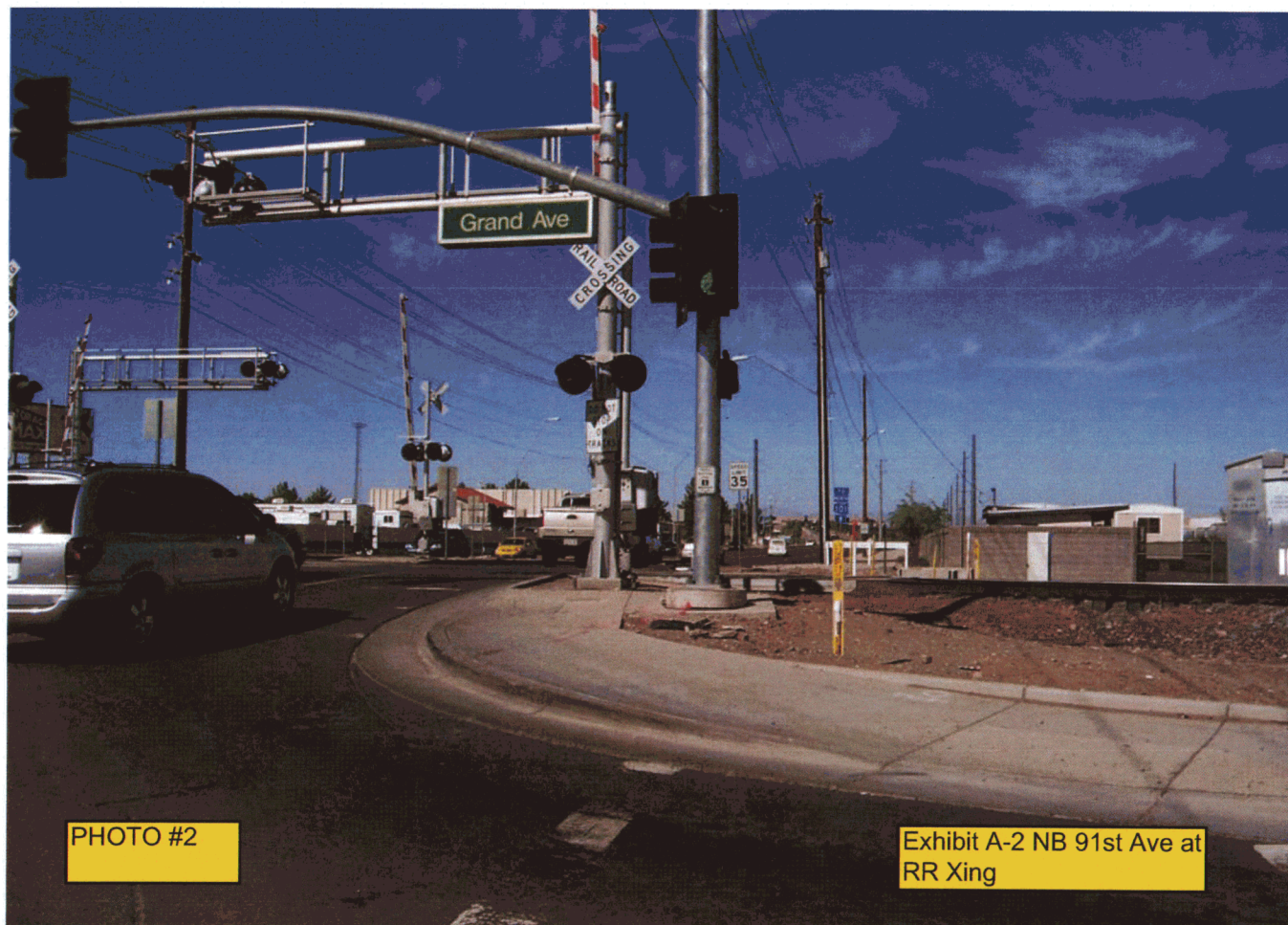


PHOTO #2

Exhibit A-2 NB 91st Ave at
RR Xing



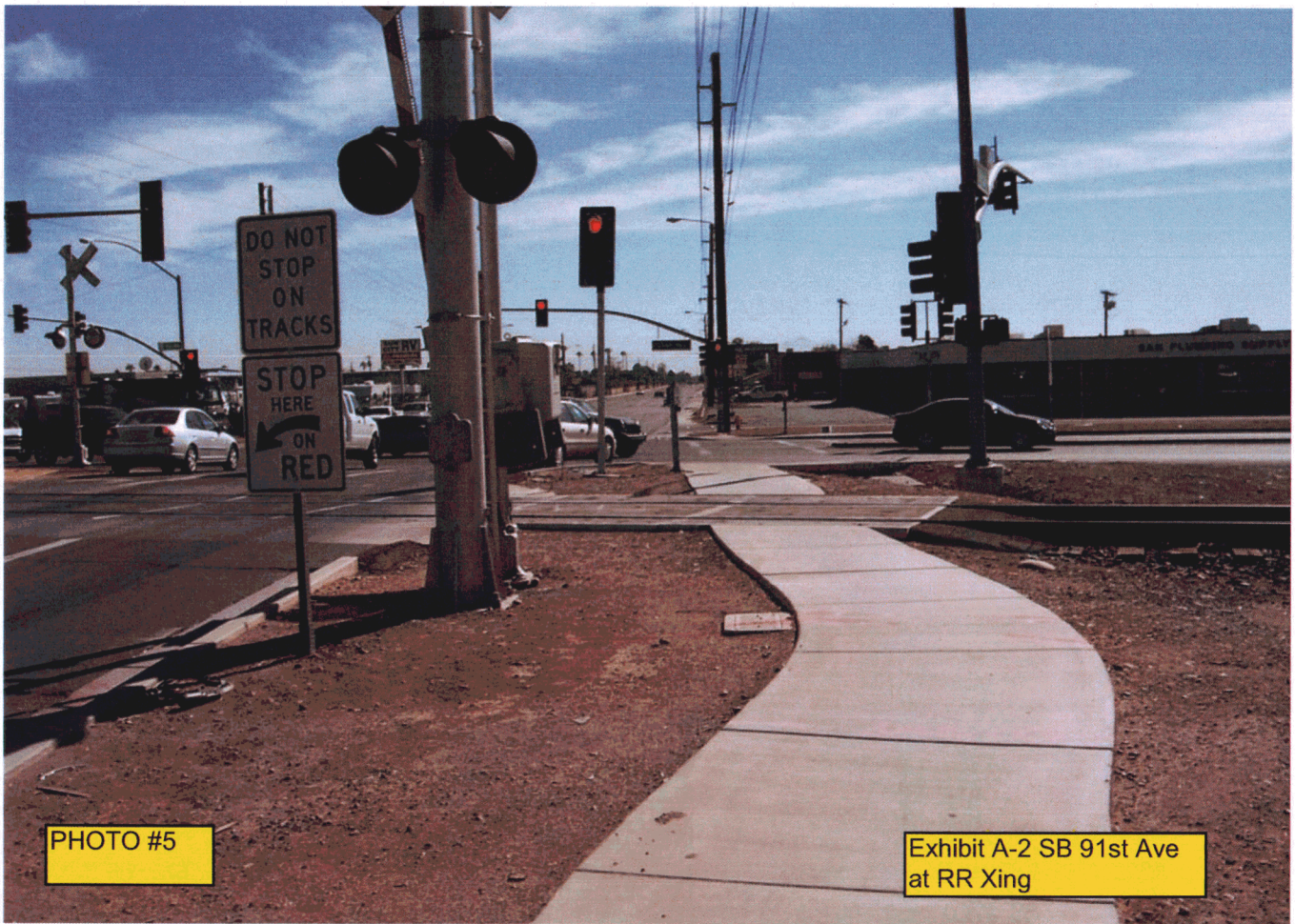


PHOTO #5

Exhibit A-2 SB 91st Ave
at RR Xing



PHOTO #6

Exhibit A-2 SB 91st Ave
at Grand Ave



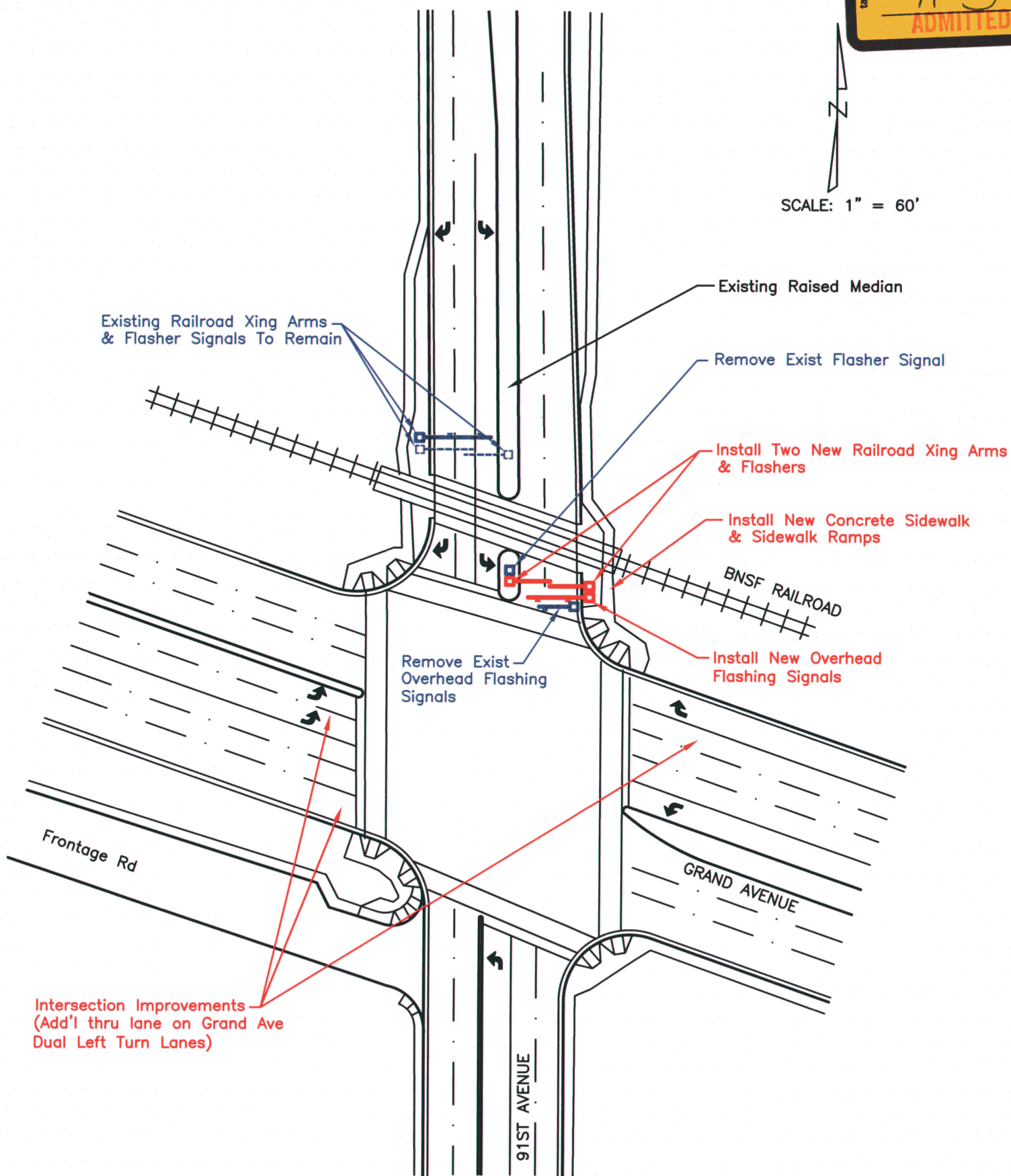
PHOTO #7

Exhibit A-2 Grand Ave
Looking East from 91st
Ave

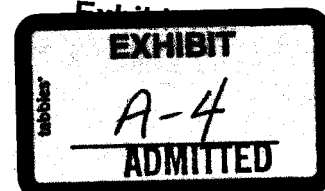


PHOTO #8

Exhibit A-2 Grand Ave
Looking West from 91st
Ave



PLANNED GRAND AVE & 91ST AVE INTERSECTION IMPROVEMENTS



1 Stephen M. Kemp, City Attorney (010026)
2 Stephen J. Burg, Chief Assistant City Attorney (012073)
3 OFFICE OF THE CITY ATTORNEY
4 CITY OF PEORIA
5 8401 West Monroe Street, Room 280
6 Peoria, Arizona 85345
7 Telephone: (623) 773-7330
8 Facsimile: (623) 773-7043
9 Email: caofiling@peoriaaz.gov
10 Attorneys for the City of Peoria

RECEIVED

2010 JAN -8 P 4:46

CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKET NO. RR-02635B-09-0529

CERTIFICATION OF NOTICE

IN THE MATTER OF APPLICATION
OF THE CITY OF PEORIA TO
UPGRADE AN EXISTING
CROSSING OF THE BURLINGTON
NORTHERN AND SANTA FE
RAILWAY AT 91st AVENUE IN THE
CITY OF PEORIA, MARICOPA
COUNTY, ARIZONA, AT AAR/DOT
NO. 025-401-W.

The City of Peoria ("Peoria") by and through undersigned counsel,
respectfully submits its Certification of Notice pursuant to the Arizona Corporation
Commission's Procedural Order dated December 2, 2009.

Pursuant to the procedural order the City of Peoria provided Burlington
Northern Santa Fe Railway Company, municipalities and interested parties the
following documents the procedural order (EXHIBIT "1"); City of Peoria's letter
dated December 8, 2009 with Grade Crossing Map (EXHIBIT "2"); City of Peoria's
letter of transmittal dated November 13, 2009 to Chris Watson of the Arizona

1 Corporation Commission (EXHIBIT "3"); City of Peoria's November 13, 2009 letter
2 to Chris Watson (EXHIBIT "4"); Grade Crossing Signal Installation Agreement
3 (LCON03209) dated June 24, 2009 (EXHIBIT "5"). The interested parties listed
4 below received proper notice of these documents by certified mail (EXHIBIT "6").
5 The certified mail receipts were received from all the interested parties, except for
6 Peoria Storage and Robin Family Limited Partnership.

7 Robin Family Limited Partnership
8 46 Village Way 127
9 Port Ludlow, Washington 98365

10 Peoria Storage Group LLC
11 18810 Montewood Drive
12 Saratoga, California 95070

13 JML LLC
14 P.O. Box 23970
15 Phoenix, Arizona 85063

16 Beverly Blackwell
17 City of Peoria-Fire Department
18 Administration Division
19 8351 W. Cinnabar Avenue
20 Peoria, Arizona 85345

21 Melvin Thomas
22 Burlington Northern Santa Fe RR
23 740 E. Carnegie Drive
24 San Bernardino, California 92408

25 Doug King
Peoria Unified School District
10721 N. 95th Avenue
Peoria, Arizona 85345

Robert Travis
Arizona Department of Transportation
205 S. 17th Avenue, MD618E
Phoenix, Arizona 85007

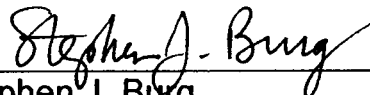
1	Bobby Garza
2	Arizona Public Service
3	P.O. Box 53999, MS 3876
	Phoenix, Arizona 85072
4	Sun City RV Sales
5	10222 Santa Fe Drive
	Sun City, Arizona 85345
6	Robert Russell
7	OSP Engineer
8	Integra Telecom
	3540 E. Baseline Road, Suite 100
	Phoenix, Arizona 85042
9	Tony Belford
10	Southwest Fibernet
11	2920 W. Directors Row
	Salt Lake City, UT 84104
12	Ron Pint
13	Cox Communications
14	1550 W. Deer Valley Road
	Phoenix, Arizona 85027
15	John Settembre
16	Qwest Communications
	135 W. Orion Street
	Tempe, Arizona 85283
17	Hector Buenrostro
18	Salt River Project
19	221 N. 79 th Avenue
	Tolleson, Arizona 85043
20	Barbara Benavidez
21	City of Peoria – Police Department
22	Administration Division
	8351 W. Cinnabar Avenue
	Peoria, Arizona 85345
23	Claudia Gantert
24	Southwest Gas
25	9 S. 43 rd Avenue MC 420-586
	Phoenix, Arizona 85009

1 The week of December 18, 2009 through December 25, 2009, the City of
2 Peoria published in the Peoria Times the Public Notice of the Hearing in the matter
3 of the application City of Peoria to upgrade an existing crossing of the Burlington
4 Northern and Santa Fe Railway at 91st Avenue in the City of Peoria, Maricopa
5 County, Arizona at AAR/DOT No. 025-401-W, Docket No. RR02635B-09-0529
6 (EXHIBIT "7").

7
8 For the foregoing reasons above the City of Peoria is in compliance with
9 the December 2, 2009 procedural order.

10 RESPECTFULLY SUBMITTED this 8th day of January 2010.

11
12 OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA

13 
14 _____
Stephen J. Burg
15 Chief Assistant City Attorney
16
17
18
19
20
21
22
23
24
25

1 ORIGINAL and 13 copies of the foregoing
2 were filed this 8th day of January, 2010, to:

3 Arizona Corporation Commission
4 Utilities Division – Docket Control
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

7 COPIES of the foregoing hand-delivered
8 this 8th day of January, 2010, to:

9 Honorable Marc E. Stern
10 Arizona Corporation Commission
11 1200 W. Washington Street
12 Phoenix, Arizona 85007

13 Janice Alward, Esq.
14 Arizona Corporation Commission
15 1200 W. Washington Street
16 Phoenix, Arizona 85007

17 Charles Hains, Esq.
18 Arizona Corporation Commission
19 1200 W. Washington Street
20 Phoenix, Arizona 85007

21 Lyn Farmer
22 Arizona Corporation Commission
23 1200 W. Washington Street
24 Phoenix, Arizona 85007

25 Steve Olea
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing mailed this
8th day of January, 2010, to:

Brian Lehman, Railroad Safety Supervisor
Arizona Corporation Commission
Railroad Safety Section
2200 N. Central Avenue
Suite 300
Phoenix, Arizona 85004

1 Chris Watson
Arizona Corporation Commission
2 Railroad Safety Section
2200 N. Central Avenue
3 Suite 300
Phoenix, Arizona 85004
4
5 Patrick Black, Esq.
Fennemore Craig
6 3003 N. Central Avenue
Suite 2600
7 Phoenix, Arizona 85012-2913
8
9 Melvin V. Thomas, Manager
Public Projects
Burlington Northern Santa Fe Railway Company
10 740 East Carnegie Drive
San Bernardino, CA 92408
11
12 Bruce Vana, P.E.
Engineer – Manager
Utility & Railroad Engineering Section
13 Arizona Department of Transportation
205 South 17th Avenue, M/D 618E
14 Phoenix, Arizona 85007
15
16 Traffic Records Section
Arizona Department of Transportation
206 South 17th Avenue, MD-064R
17 Phoenix, Arizona 85007
18
19 Kelly Roy
Utility Project Coordinator
Maricopa County Department of Transportation
20 2901 West Durango Street
Phoenix, Arizona 85009-6357
21
22 Arizona Reporting Service Inc.
2200 N. Central Avenue
Suite 502
23 Phoenix, Arizona 85004-1481
24
25

1 City of Peoria Interoffice Mail to:

2 Richard Costa

3 Associate Engineer

4 City of Peoria

5 Capital – Engineering Dept.

6 9875 N. 85th Avenue

7 Peoria, Arizona 85345

8

9



NOF Certification.LDO 1-05-10

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

2009 DEC -1 P 2:18

DEC - 2 2009

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

8 IN THE MATTER OF THE APPLICATION
9 OF THE CITY OF PEORIA TO UPGRADE
10 AN EXISTING CROSSING OF THE
11 BURLINGTON NORTHERN AND SANTA
12 FE RAILWAY AT 91ST AVENUE IN THE
13 CITY OF PEORIA, MARICOPA COUNTY,
14 ARIZONA, AT AAR/DOT NO. 025-401-W.

DOCKET NO. RR-02635B-09-0529

PROCEDURAL ORDER

15 **BY THE COMMISSION:**

16 On November 17, 2009, the City of Peoria ("City") filed with the Arizona Corporation
17 Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe
18 Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at 91st
19 Avenue in the City of Peoria, Maricopa County, Arizona, at AAR/DOT No. 025-401-W.

20 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
21 the preparation and conduct of this proceeding.

22 IT IS THEREFORE ORDERED that the request of the City of Peoria shall be considered an
23 application for the Railroad to upgrade an existing crossing pursuant to A.R.S. § 40-337, et seq.

24 IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this
25 proceeding.

26 IT IS FURTHER ORDERED that the hearing on the application shall be held on February
27 12, 2010 at 9:30 a.m., or as soon thereafter as is practical, at the Commission's offices, Hearing
28 Room 1, 1200 West Washington Street, Phoenix, Arizona.

IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
Order, THE CITY OF PEORIA SHALL PROVIDE THE RAILROAD AND ANY OTHER
MUNICIPALITY OR INTERESTED PARTY that may be affected by the application with a copy
of the application and this Procedural Order by certified mail.

1 IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section ("Staff") shall
2 prepare a written Staff Report and associated exhibits to be presented at hearing and file copies of
3 them with Docket Control on or before 4:00 p.m. on January 14, 2010.

4 IT IS FURTHER ORDERED that any objections to the Staff Report and associated
5 exhibits shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on January
6 24, 2010.

7 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-
8 105, except that all motions to intervene must be filed on or before January 21, 2010.

9 IT IS FURTHER ORDERED that the City of Peoria shall provide public notice of the hearing
10 in this matter, in the following form and style:

11 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE**
12 **APPLICATION OF THE CITY OF PEORIA TO UPGRADE AN EXISTING**
13 **CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE**
14 **RAILWAY AT 91ST AVENUE IN THE CITY OF PEORIA, MARICOPA**
15 **COUNTY, ARIZONA, AT AAR/DOT NO. 025-401-W.**
16 **(DOCKET NO. RR-02635B-09-0529)**

17 On November 17, 2009, the City of Peoria ("City") filed with the Arizona
18 Corporation Commission ("Commission") an application for approval for the
19 Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade an
20 existing crossing at the Railroad's tracks at 91st Avenue, in Peoria, Arizona, at
21 AAR/DOT No. 025-401-W.

22 The application is available for inspection during regular business hours at the offices
23 of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona,
24 and on the internet via the Commission website (www.azcc.gov) using the e-docket
25 function.

26 The Commission will hold a hearing on this matter commencing on February 12,
27 2010 at 9:30 a.m., at the Commission's offices, 1200 West Washington Street,
28 Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate
circumstances, interested parties may intervene. Intervention shall be permitted to
any person entitled by law to intervene and having a direct and substantial interest in
the matter. Persons desiring to intervene must file a written motion to intervene with
the Commission, which motion should be sent to Applicant or its counsel and to all
parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of Railroad, a neighboring property owner, a crossing user, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before January 21, 2010. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions about this application, you may contact the applicant at [insert telephone number]. If you wish to file written comments on the application or want further information on intervention, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000 or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number (602) 542-3931, E-mail SABernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.


IT IS FURTHER ORDERED that City of Peoria shall cause the above notice to be published at least once in a newspaper of general circulation in the city where the crossing is located, with publication to be completed no later than January 4, 2010.

IT IS FURTHER ORDERED that notice shall be deemed complete upon the mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive the notice.

IT IS FURTHER ORDERED that the CITY OF PEORIA SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE after the publication of notice ordered herein has been completed.

IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 1st day of December 2009.


MARC E. STERN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 1st day of December 2009 to:

Richard Costa, Associate Engineer
Capital Engineering Division
CITY OF PEORIA
8401 West Monroe Street
Peoria, AZ 85345

Kelly Roy, Utility Project Coordinator
MARICOPA COUNTY
DEPARTMENT OF TRANSPORTATION
2901 West Durango Street
Phoenix, AZ 85009

Patrick J. Black
FENNEMORE CRAIG
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012
Attorney for BNSF

Brian Lehman, Chief
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Melvin V. Thomas, Manager
Public Projects
BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY
740 East Carnegie Drive
San Bernardino, CA 92408

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Bruce Vana, P.E., Engineer-Manager
Utility & Railroad Engineering Section
ARIZONA DEPARTMENT OF
TRANSPORTATION
205 South 17th Avenue, M/D 618E
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

Traffic Records Section
ARIZONA DEPARTMENT OF
TRANSPORTATION
206 South 17th Avenue, MD-064R
Phoenix, AZ 85007

By: 
Debra Broyles
Secretary to Marc Stern

2



City of Peoria

Engineering

9875 N. 85th Avenue, Peoria AZ 85345
Ph: 623-773-7212 Fax: 623-773-7211

December 8, 2009

VIA CERTIFIED MAIL

RE: 91st Avenue, BNSF Railroad Crossing Improvements
Arizona Corporation Commission Application Letter
City of Peoria Project No. P-0701, ADOT Tracs No. 060 MA 148 H6690 01C
Federal Aid No. ARRA -060-B(200)A
Burlington Northern Santa Fe (BNSF) Railway Company Project# U.S. DOT Number 025401W,
Phoenix Subdivision, Mile Post 178.444, Line Segment 7208

To Whom It May Concern:

On November 17, 2009, the City of Peoria ("City") filed an Application with the Arizona Corporation Commission ("ACC") to improve the existing 91st Avenue/Burlington Northern Santa Fe Railway Company ("BNSF") Railroad at grade railroad crossing in the City of Peoria.

The proposed improvements to the railroad crossing are required as a result of a current joint partnership project between the Arizona Department of Transportation and the City of Peoria to widen Grand Avenue from two lanes in each direction to three lanes from 99th Avenue to 83rd Avenues. In addition, the intersection of 91st Ave & Grand Avenue will be further improved to include dual left turn lanes for eastbound Grand Avenue to northbound 91st Ave (northbound L101 on ramp). Due to the close proximity of the existing intersection to the BNSF Railroad tracks, the existing 91st Ave/BNSF Railroad roadway crossing will require upgrades including new curbs & sidewalks. Additionally BNSF is requiring modifications to the existing railroad flasher signals, gate arms, and railroad crossing warning devices at the crossing. I have enclosed an exhibit showing the proposed improvements identified in the City's Application to the ACC for your use.

As part of the application process, the ACC is requiring that the City provide BNSF and any other municipality or interested party, which may be affected by the City's Application, with notice of such (i.e., a copy of the Application and the Procedural Order). Enclosed please find both documents. If you have any questions, please feel free to contact me at (623) 773-7212, or via e-mail at Richard.costa@peoriaaz.gov.

Sincerely,


Richard Costa
Associate Engineer

Enclosures

RC:jb

J:\Capital Projects\Streets\EN00214 (P-0701) _ Grand Ave Widening_84th Ave to 99th Ave(Formerly P-0404)\Arizona Corporation Commission\Procedural Order\Letter_Interested Parties_120709.doc

www.peoriaaz.gov/engineering

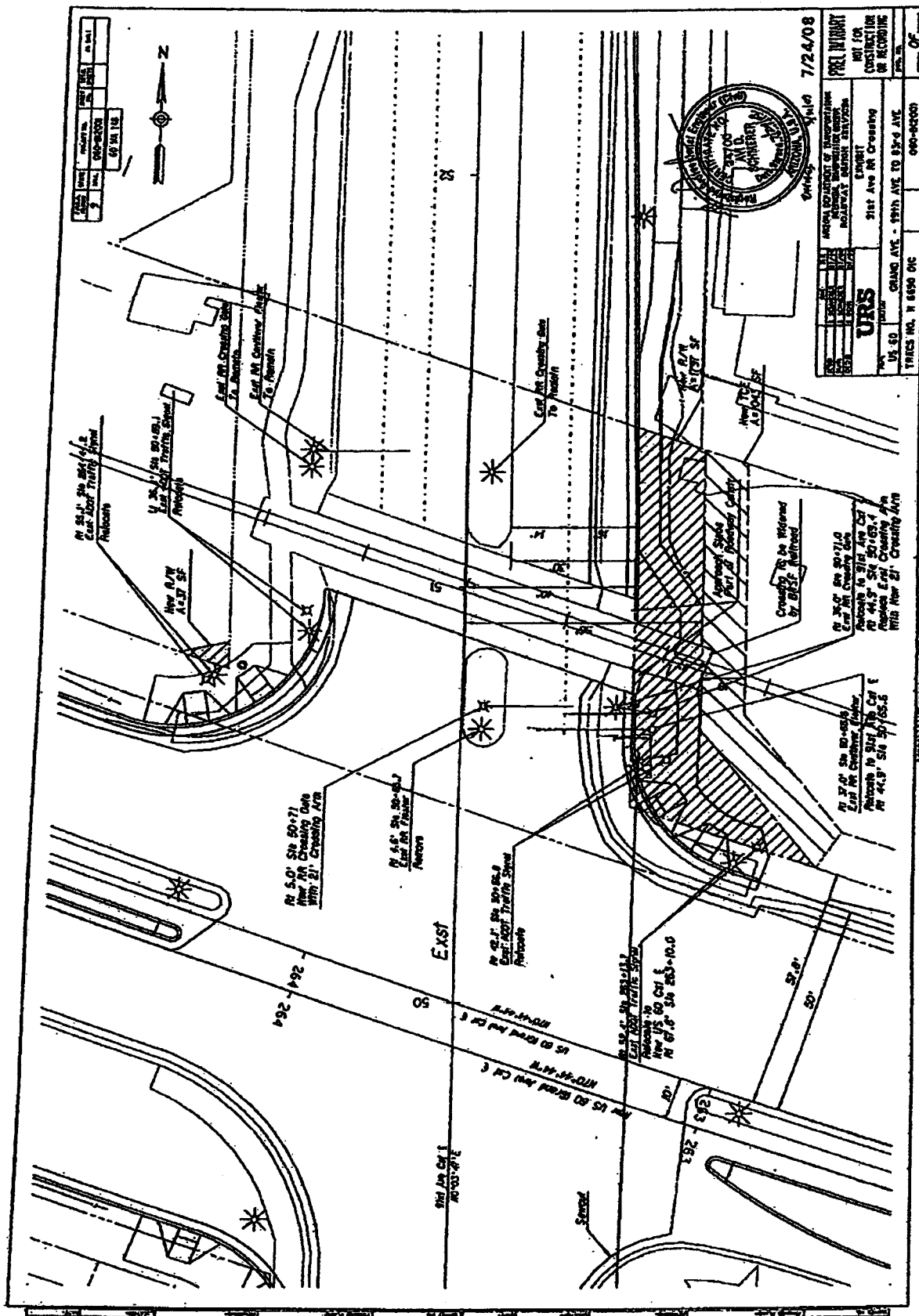


EXHIBIT A

3



City Of Peoria
Engineering Department
Capital Improvement Projects
8401 W. Monroe Street
Peoria, AZ 85345-6560
(623) 773-7210
FAX: (623) 773-7211

LETTER OF TRANSMITTAL

DATE: November 13, 2009	ENGINEERING NO. P-0701
-------------------------	---------------------------

ATTENTION: Chris Watson

RE: 91st Ave, BNSF Railroad Grade Crossing
ADOT Tracs No. 060 MA 148 H6690 01C. Federal Aid
No. ARRA -060-B(200). BNSF Railway Project# U.S.
DOT Number 025401W, Mile Post 178.444, Line
Segment 7208

TO: Arizona Corporation Commission

Office of Railroad Safety

1200 W. Washington St

Phoenix, Az. 85007

WE ARE SENDING YOU the following items:

- ☒ Application Letter (1-Original, 13 Copies)
- ☒ Executed Agreement with BNSF Railroad (14 Copies)
- ☒ Project Improvements Map (14 copies)

Remarks: Chris, based upon the Arizona Corporation Commission procedure manual for requesting upgrading an existing railroad crossing, attached are the required documents for application to the Commission for approval. The subject crossing being proposed is a widening of an existing at grade crossing for 91st Ave and the Burlington Northern Santa Fe Railroad. Based upon previous discussions, I understand that the complete application approval process can take up to 120 days to complete. We will be expecting to receive a procedural order from an Administrative Law Judge, as outlined in your procedure manual, once application is made to the Commission. Please let me know as soon as possible if our initially application is incomplete so I can make any corrections.

Richard Costa, Associate Engineer, City of Peoria Capital Division (623-773-7951)

COPY TO: Robert Travis; Arizona Dept of Transportation, State Railroad Liaison; Steve Burg; City of Peoria, Attorney's Office, Civil Division

SIGNED:

Richard Costa

4



City of Peoria

Engineering

9875 N. 85th Avenue, Peoria AZ 85345
Ph: 623-773-7212 Fax: 623-773-7211

November 13, 2009

Mr. Chris Watson
Arizona Corporation Commission
Office of Railroad Safety
1200 W. Washington Street
Phoenix, AZ 85007

RE: 91st Avenue, BNSF Railroad Crossing Improvements
Arizona Corporation Commission Application Letter
City of Peoria Project No. P-0701, ADOT Tracs No. 060 MA 148 H6690 01C
Federal Aid No. ARRA -060-B(200)A
Burlington Northern Santa Fe (BNSF) Railway Company Project# U.S. DOT Number 025401W,
Phoenix Subdivision, Mile Post 178.444, Line Segment 7208

Dear Mr. Watson:

The City of Peoria (City) in partnership with the Arizona Department of Transportation (ADOT) is hereby submitting the enclosed application to the Arizona Corporation Commission (ACC) to upgrade the existing 91st Ave/BNSF Railway crossing, located at Mile Post 178.444 in the City of Peoria. At the request of the City and ADOT, this application to the Commission would authorize the City to widen the existing through lanes at the railroad crossing, construct concrete sidewalks, extend railroad crossing surfaces, and authorize BNSF Railway to install new advance warning devices and relocate existing warning devices at the crossing to accommodate the crossing upgrades.

1. Project Location and Description:

This subject railroad improvement project is part of an overall joint project effort between the Arizona Department of Transportation (ADOT) and the City of Peoria to widen US 60 (Grand Ave) from 99th Ave to 83rd Ave to include three thru lanes in each direction. The project also includes improvements at the existing 91st Ave & Grand Ave intersection to include additional turn lanes in all directions. During the design process, ADOT determined that additional upgrades to the 91st Ave/BNSF Railway crossing would be required to safely accommodate northbound 91st Ave vehicular turning movements, including relocation of existing curbs, sidewalk ramps, and installation of a new pedestrian sidewalk all within the existing BNSF Railway rights-of-way. In addition, existing railroad crossing advance warning devices (gates, flasher, etc) would need to be relocated as part of the crossing improvements including adding one new gate and flasher assembly and installation of new concrete surfaces.

2. Why is the Crossing needed?

The crossing is an existing arterial roadway crossing which currently provides the City of Peoria and ADOT with regional traffic moving benefits both to and from east and west valleys as well as access to the L101 freeway system which is immediately adjacent to the existing crossing.

3. Why the Crossing cannot be Grade Separated:

Given the proximity to the existing crossing to L101 freeway and the associated significant benefits of regional traffic connectivity between L101, Grand Ave (US60), 91st, Ave, and Cactus Road a grade separation of 91st Ave (depress and elevated) is not considered a viable option for this crossing by ADOT or the City of Peoria.

4. Construction Phasing:

Currently ADOT is under contract with Pulice Construction to complete the agency contractor requirements included with the approved Grade Crossing Signal Agreement which would begin once the Opinion and Order is issued by the Commission. However in the interest of schedule, ADOT has agreed to issue a notice to proceed to Pulice Construction to begin specific roadway improvements associated with the Grand Ave widening improvements which are not subject to this application or the approved signal agreement.

5. Maintenance of the crossing:

By agreement, BNSF Railway will maintain the crossing surface and signal equipment. The City will maintain the road approaches, sidewalks, roadway signs and pavement striping in accordance with MUTCD guidelines.

6. Project Costing and Funding:

The railroad crossing upgrade portion of the project is being funded by the Federal Highway Administration (American Reinvestment and Recovery Act - ARRA) and the City of Peoria. The estimated cost and funding breakout is as follows:

Costs:

Warning Devices, Roadway Improvements, Easements, and Admin	\$180,055.00
---	--------------

Funding:


FHWA (Warning Devices, Roadway Improvements, Easements, and Admin)	\$151,000.00
City of Peoria (Sidewalk & Easements)	<u>\$ 29,055.00</u>

Total:	\$180,055.00
---------------	---------------------

Letter – Arizona Corporation Commission (Mr. Chris Watson)
Burlington Northern Santa Fe (BNSF) Railway Company (EN00214)
November 13, 2009
Page: 3

If you have any questions please feel free to contact me at (623) 773-7951, or via email at richard.costa@peoriaaz.gov.

Sincerely,

A handwritten signature in black ink that reads "Richard Costa". The signature is written in a cursive style with a large, stylized "R" and "C".

Richard Costa,
Associate Engineer

Enclosure

RC:jb
J:\Capital Projects\Streets\EN00214 (P-0701) _ Grand Ave Widening_ 84th Ave to 99th Ave(Formerly P-0404)\Arizona Corporation
Commission\Application\Letter_ACC_Application 111209.doc

5

LAW DEPARTMENT APPROVED

Mile Post 178.444
Line Segment 7208
U.S. DOT Number 025401W
SUB Phoenix

GRADE CROSSING SIGNAL INSTALLATION AGREEMENT

THIS GRADE CROSSING SIGNAL INSTALLATION AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of JUNE 24, 2009 by and between the City of Peoria, a Political Subdivision of the State of Arizona/a Municipal Corporation, herein represented and acting through its City Council (hereinafter called, "AGENCY"), and BNSF RAILWAY COMPANY, a Delaware Corporation (hereinafter called, "RAILROAD");

WITNESSETH:

WHEREAS, to improve the existing 91st Ave at-grade crossing, located at BNSF Line Segment 7208 and Milepost 174.44, and designated by D.O.T. No. 025401W, by: (1) reconstructing and widening the roadway; (2) extending a new concrete and rubber crossing surface for pedestrian movement; and (3) relocating/installing railroad crossing signals and activation equipment within an existing roadway easement and a new roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment");

WHEREAS, the AGENCY is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at 91st Ave;

WHEREAS, the RAILROAD agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I - SCOPE OF WORK

1. The term "Project" as used in this agreement includes any and all work related to the widening of 91st Avenue by Agency and installation of crossing signals and activation equipment and new crossing surface at U.S. DOT crossing 025401W (hereinafter referred to as "Crossing") more particularly described on Exhibits A and B attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, installation of advance warning signs and pavement marking stop bars, installation of any new crossing surface, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

ARTICLE II - BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the Agency's covenants contained herein, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct

the Crossing across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, attached hereto and incorporated herein, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

Prior to commencing any work on BNSF's property or right-of-way, Agency must pay BNSF the sum of two-thousand five-hundred and No/100 Dollars (\$2,500) as compensation for the Temporary Construction License. The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) twelve (12) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Crossing only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Crossing. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon receiving the payment from Agency described in the subsequent sentence and provided Agency is in compliance with the terms and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Crossing, substantially in the form of Exhibit B attached to this Agreement. Agency must pay BNSF the sum of four-thousand six-hundred twenty-two and 78/100 Dollars (\$4,622.78) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 8 of this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, reasonably revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services necessary for the safety of BNSF's property and the operation of its trains during construction of the Project as set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF reasonably deems necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work must be performed by BNSF with prior approval of Agency, which shall not be withheld unreasonably, and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

ARTICLE III – AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.

2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Agency must acquire all rights of way necessary for the construction of the Project.

4. Agency must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

5. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

- (a) Design and Widening of Grand Ave at 91st Ave;
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");

- (c) Installation of advance warning signs in accordance with the MUTCD
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment.
- (g) Construct asphalt/concrete roadway surface on approaches to each track. Roadway surface will match elevation of the Main Track crossing surface and remain level to a point at least thirty (30) feet from nearest rail. Any concrete headers will be constructed no closer than 5'-6" (preferably 6'-0") from centerline of each track to provide for a minimum of 11'-0" (preferably 12'-0") opening for track and railroad crossing surface;
- (h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

6. The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.

7. The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.

8. The Agency must give BNSF's Manager Public Projects written notice to proceed ("Notice to Proceed") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

9. The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

10. In order to prevent damage to BNSF trains and property, Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

11. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Engineering Representative Richard Barnitz (505-767-6826) and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

(b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative Richard Barnitz (505-767-6826) to stop construction at no cost to the Agency or BNSF until these items are completed.

(c) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF**

(d) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

12. Agency must incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III, Sections 9, 10, 11, and 13; (ii) the provisions set forth in Article IV, Sections 3, 4, 8 and 9; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

13. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided;

however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.

- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

14. Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

15. TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

ARTICLE IV - JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Richard Costa
Associate Engineer
Engineering Dept Capital Division
9875 North 85th Ave
Peoria, AZ 85345

5. Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Richard Barnitz, Field Engineering (505-767-6826) for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement.

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 025401W and D.O.T. Crossing No. 025401W and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 91st Ave roadway.
- (b) Agency will maintain the elevation of the 91st Ave roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
- (c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- (d) Agency will do nothing and permit nothing to be done in the maintenance of the 91st Ave roadway, which will interfere with or endanger facilities of BNSF.
- (e) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition.
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- (h) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
- (i) If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
 - a) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
 - b) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
- (j) If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable Agency at the time of such replacement is warranted.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for maintenance purposes. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same

may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Arizona and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

12. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

13. In the event construction of the Project does not commence within one (1) year of the Effective Date, this Agreement will become null and void.

14. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

15. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

16. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

17. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager Public Projects
Melvin Thomas
740 East Carnegie Drive
San Bernardino, CA 92408

Agency:

Richard Costa
Associate Engineer
Engineering Dept Capital Division
9875 North 85th Ave
Peoria, AZ 85345

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BNSF RAILWAY COMPANY

By: [Signature]

Printed Name: Melvin Thomas

Title: Manager Public Projects

CITY OF PEORIA

By: [Signature]
Carl Swenson

Title: City Manager

ATTEST:

[Signature]
Mary Jo Kief, City Clerk



Approved as to Form:

[Signature]
Stephen M. Kemp, City Attorney

Exhibit "A"

[Insert drawing of crossing here]

(general picture of crossing and final product, can be more than 1 sheet if you need)

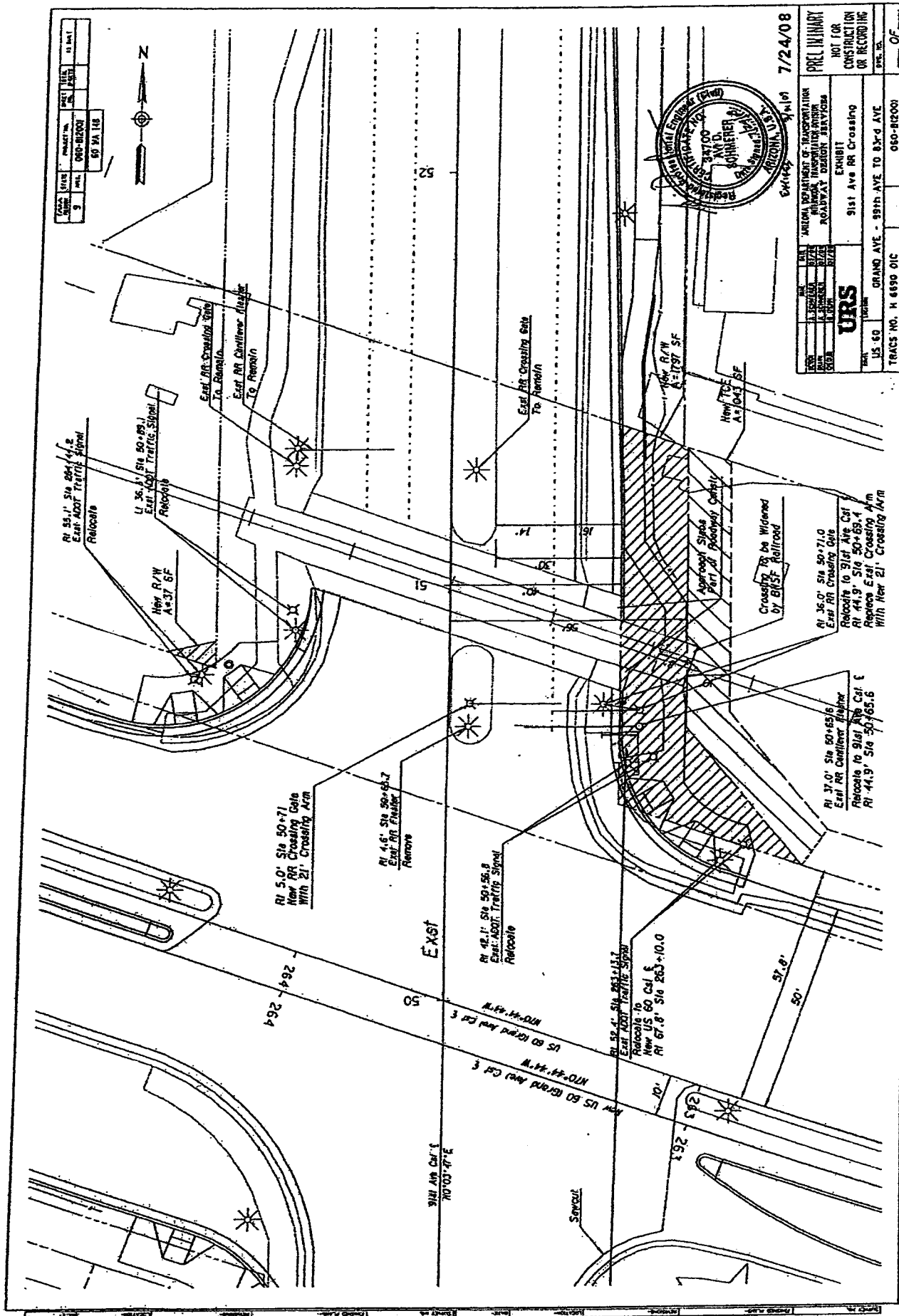


EXHIBIT A

Exhibit "B"

[Insert easement form here]

(please make sure that legal description has been created, spoken with Jones Lang LaSalle (formally Staubach), and values have been assigned)

**EASEMENT AGREEMENT
FOR 91st AVENUE AT GRADE CROSSING**
Attachment to Grade Crossing Signal Installation Agreement

THIS EASEMENT AGREEMENT FOR 91st AVENUE AT GRADE CROSSING ("Easement Agreement") is made and entered into as of the 29th day of SEPTEMBER 2009 ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and CITY OF PEORIA, an Arizona Municipal Corporation ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of Peoria, County of Maricopa, State of Arizona, at Mile Post 178.4, [Project # P-0701], as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Grade Crossing Signal Installation Agreement dated as of June 24, 2009 concerning improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 **Term of Easement.** The term of the Permanent Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. The term of this Temporary Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is one (1) year after the Effective Date or completion of the project, whichever occurs first.

Section 3 **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 **Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and

remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 7. Should Grantee not comply fully with the above-stated obligations of this Section 7, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 9.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by Section 9.

8.4 Non-exclusive Remedies. The remedies set forth in this Section 8 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or

Law Department Approved

EXHIBIT "A"

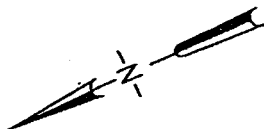
Premises

EXHIBIT "A"

Staubach Tracking Tr:
B&W Proj. No.: 012196.003
MAP REFERENCE:
Sta. = n/a
R/W = 135252
Land = n/a

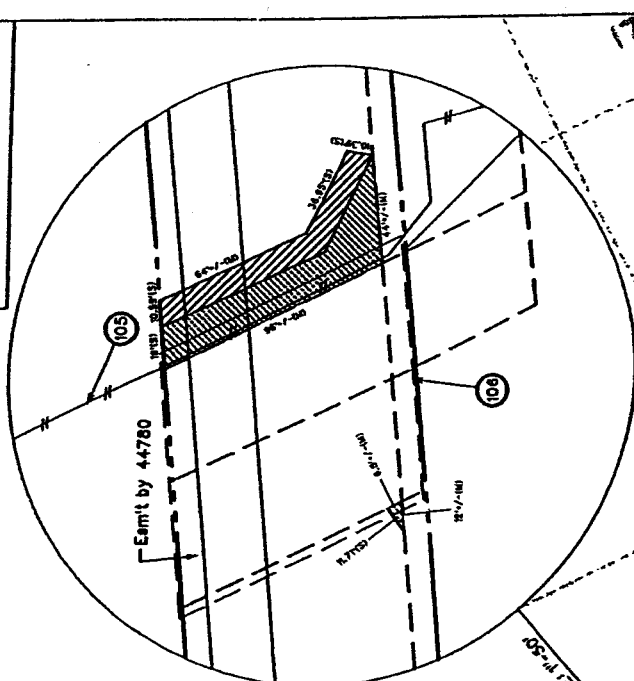
AT&SF R/L
AZ-06
31

Scale: 1" = 400' +/-



9396-330 LT BR17A0
9401-72.3 "W" POWERED 8.3" L
9402-82.5 510000 WHOLE 8.3" L
9403-5500 DANGER 8.3" L
9404-522 8.3" L
9405-42.8 2700 CRACK BR17A1 25.1

9407-42.7 5.500 178.3
9408-35.0 4.000 178.4
9409-21.0 0.400 178.5 - CONTOUR 172.50
9410-10.0 0.400 178.5



ES 9430-17 BF-20000 FIBER OPTIC LINE
9427-81.6 W.R. 5" H
INSET SCALE 1"=50'

To: West Williams Jct.

To: Phoenix

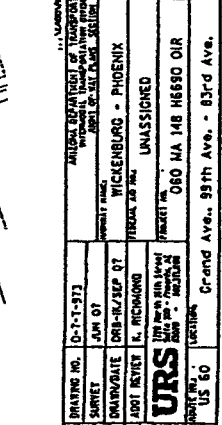
MAINTENANCE UNIT ON SITE

Southwest Division
Phoenix Subdivision - L.S. 7208-1
Val. Sec. 47060
AT&SF AZ-06, Map 31
Sec. 21 & 22, T3N, R1E G&SRiver.M
February 12, 2009
M.P. 179.44 SMC

Legend:
Permanent Easement
Temporary Easement

City of Peoria
Peoria
Maricopa County,
Arizona

DRAWING NO. 3-45823

[illegible]

* The Highway column appeared in ADP's for the National Archives for the service of the highway (part of way) into the Washington (right of way), as described in No. 131 of County No. 1, 1907-18.

see item 131 of Day to be completed by City of Pueblo from
Bureau, Boulder.

DESCRIPTION FOR NEW RIGHT OF WAY

PARCEL NO. 1:

That portion of the BNSF Railway Company right of way being a 100.00 foot strip of land as depicted on Right of Way and Track Map V-6/31-C.E.C.L. 227-14542-31, and further depicted on the BNSF Railway Right of Way and Track Map, Line Segment 7208, C.E. 135252 and BNSF Railway Station Map - Peoria, Arizona, Line Segment 7208, C.E. 507580, lying within the Northwest quarter of the Northwest quarter (NW¼NW¼) of Section 22, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a 3 inch City of Peoria brass cap in hand hole marking the Northwest corner of said Section 22, being North 0°03'47" East 2643.40 feet from a 3 inch City of Peoria brass cap in hand hole marking the West quarter corner of said Section 22;

thence along the West line of said Section 22, South 0°03'47" West 984.66 feet to the existing right of way centerline of U.S. Highway 60 (WICKENBURG - PHOENIX HIGHWAY);

thence along said existing right of way centerline, South 70°42'50" East 76.74 feet;

thence North 19°17'10" East 33.00 feet to the POINT OF BEGINNING on the existing northerly right of way line of said U.S. Highway 60;

thence along said existing northerly right of way line, North 70°42'50" West 45.89 feet to the existing easterly right of way line of 91st Avenue;

thence along said existing easterly right of way line, North 0°03'47" East 91.71 feet to the existing northerly said BNSF Railway right of way line;

thence along said existing northerly BNSF Railway right of way line, South 70°42'50" East 16.94 feet;

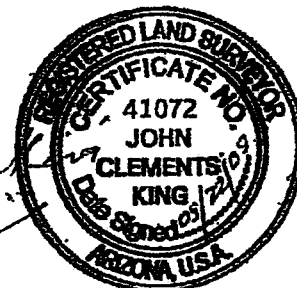
thence South 0°03'47" West 67.60 feet;

thence South 39°01'14" East 43.35 feet to the POINT OF BEGINNING.

1797 square feet, more or less.

(continued)

EXHIBIT "A"
PAGE 1



Expires: 06/30/2010

PROJECT: 060 MA 148 H6690 01R LOCATION: Grand Ave., 99th Ave. - 83rd Ave. PARCEL: 7-10588.

CR 9/22/09

PARCEL NO. 2:

That portion of the BNSF Railway Company right of way being a 100.00 foot strip of land as depicted on Right of Way and Track Map V-6/31-C.E.C.L. 227-14542-31, and further depicted on the BNSF Railway Right of Way and Track Map, Line Segment 7208, C.E. 135252 and BNSF Railway Station Map - Peoria, Arizona, Line Segment 7208, C.E. 507580, lying within the Northeast quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 21, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a 3 inch City of Peoria brass cap in hand hole marking the Northeast corner of said Section 21, being North 0°03'47" East 2643.40 feet from a 3 inch City of Peoria brass cap in hand hole marking the East quarter corner of said Section 22;

thence along the East line of said Section 21, South 0°03'47" West 984.66 feet to the existing right of way centerline of U.S. Highway 60 (WICKENBURG - PHOENIX HIGHWAY);

thence along said existing right of way centerline, North 70°42'50" West 81.87 feet;

thence North 19°17'10" East 33.00 feet to the POINT OF BEGINNING on the existing northerly right of way line of said U.S. Highway 60;

thence North 77°43'44" East 11.71 feet to the existing westerly right of way line of 91st Avenue;

thence along said existing westerly right of way line, South 0°03'47" West 6.49 feet to said existing northerly right of way line of U.S. Highway 60;

thence along said existing northerly right of way line, North 70°42'50" West 12.11 feet to the POINT OF BEGINNING.

37 square feet, more or less.

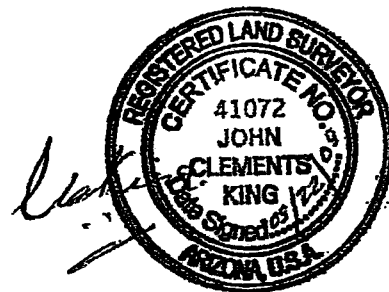


EXHIBIT "A"

PAGE 2

Law Department Approved

EXHIBIT "B"

MEMORANDUM OF EASEMENT

Memorandum of Easement

THIS MEMORANDUM OF ACCESS EASEMENT is hereby executed this 29th day of SEPTEMBER, 2009, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and CITY OF PEORIA, an Arizona Municipal Corporation, whose address for purposes of this instrument is 9875 North 85th Avenue, Peoria, Arizona 85345, ("Grantee") which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Maricopa County, Arizona as described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated SEPTEMBER 29, 2009, (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

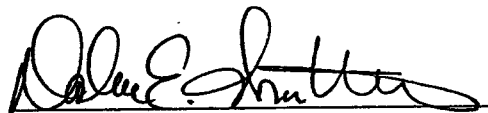
The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

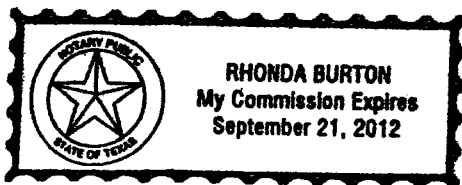
GRANTOR:

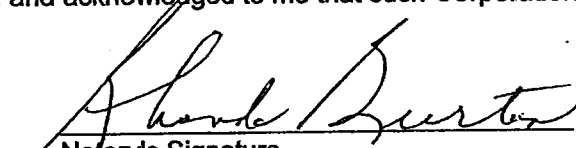
BNSF RAILWAY COMPANY, a Delaware corporation

By: 
Name: Dalen E. Wintermute
Title: Manager-Land Revenue Management

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

On this 29th day of September, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Dalen E. Wintermute, known to me to be Manager-Land Revenue Management, of BNSF Railway Company, the corporation that executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.




Notary's Signature
My Commission Expires: 9/21/2012

Law Department Approved

GRANTEE:

City of Peoria, an Arizona municipal corporation

By:

Susan Thorpe
Carl Swenson

Title: City Manager

ATTEST:

Rhonda Simmons
For Mary Jo Kief, City Clerk



Approved as to Form:

Stephen M. Kemp
Stephen M. Kemp, City Attorney

STATE OF ARIZONA

§
§
§

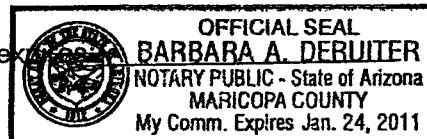
COUNTY OF MARICOPA

This instrument was acknowledged before me on the 19th day of May, 2009, by Susan Thorpe for Carl Swenson, as City Manager, of the City of Peoria, an Arizona Municipal Corporation.

Barbara A. DeRuiter
Notary Public

(Seal)

My appointment expires



DESCRIPTION FOR NEW RIGHT OF WAY

PARCEL NO. 1:

That portion of the BNSF Railway Company right of way being a 100.00 foot strip of land as depicted on Right of Way and Track Map V-6/31-C.E.C.L. 227-14542-31, and further depicted on the BNSF Railway Right of Way and Track Map, Line Segment 7208, C.E. 135252 and BNSF Railway Station Map - Peoria, Arizona, Line Segment 7208, C.E. 507580, lying within the Northwest quarter of the Northwest quarter (NW¼NW¼) of Section 22, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a 3 inch City of Peoria brass cap in hand hole marking the Northwest corner of said Section 22, being North 0°03'47" East 2643.40 feet from a 3 inch City of Peoria brass cap in hand hole marking the West quarter corner of said Section 22;

thence along the West line of said Section 22, South 0°03'47" West 984.66 feet to the existing right of way centerline of U.S. Highway 60 (WICKENBURG - PHOENIX HIGHWAY);

thence along said existing right of way centerline, South 70°42'50" East 76.74 feet;

thence North 19°17'10" East 33.00 feet to the POINT OF BEGINNING on the existing northerly right of way line of said U.S. Highway 60;

thence along said existing northerly right of way line, North 70°42'50" West 45.89 feet to the existing easterly right of way line of 91st Avenue;

thence along said existing easterly right of way line, North 0°03'47" East 91.71 feet to the existing northerly said BNSF Railway right of way line;

thence along said existing northerly BNSF Railway right of way line, South 70°42'50" East 16.94 feet;

thence South 0°03'47" West 67.60 feet;

thence South 39°01'14" East 43.35 feet to the POINT OF BEGINNING.

1797 square feet, more or less.

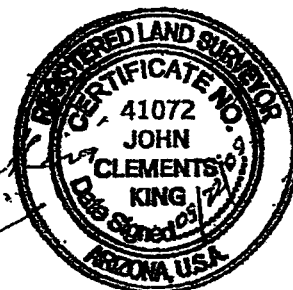


EXHIBIT "A"
PAGE 1

Expires: 03/30/2010

Exhibit "C"

(please use C and C1 that BNSF provided on 11/5/08) mvt

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General

- 1.01.01 The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of _____.
- 1.01.02 The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to ~~Rose, Manning~~ at Marsh, USA, 214-303-8519.
- 1.01.03 The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- 1.01.04 The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Richard Costa
Associate Engineer
Engineering Dept Capital Division
9875 North 85th Ave
Peoria, AZ 85345

- 1.01.05 The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

1.01.06 The Contractor must notify the City of Peoria at 623-773-7212 and Railway's Manager Public Projects, telephone number 909-386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file 025401W.

- 1.01.07 For any bridge demolition and/or falsework above any tracks or any excavations located within any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- 1.01.08 Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- 1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- 1.03.01 The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- 1.03.02 The Contractor must notify the Railway's Division Superintendent Paul Thomas at 602-382-5828 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- 1.03.03 The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- 1.03.04 Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- 1.03.05 Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Peoria and must not be undertaken until approved in writing by the Railway, and until the City of Peoria has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- 1.03.06 In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- 1.03.07 The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by City of Peoria for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- 1.03.08 At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- 1.03.09 Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- 1.03.10 The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- 1.04.01 Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Railway Flagger Services:

1.05.01 The Contractor must give Railway's Roadmaster (telephone 602-382-5803) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- 1.05.02 Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - 1.05.02a When, upon inspection by Railway's Representative, other conditions warrant.
 - 1.05.02b When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - 1.05.02c When work in any way interferes with the safe operation of trains at timetable speeds.
 - 1.05.02d When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - 1.05.02e Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- 1.05.03 Flagging services will be performed by qualified Railway flaggers.
 - 1.05.03a Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - 1.05.03b Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - 1.05.03c The cost of flagger services provided by the Railway will be borne by the (Agency). The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
 - 1.05.03d The average train traffic on this route is 13 freight trains per 24-hour period at a timetable speed 40 MPH and 0 passenger trains at a timetable speed of 0 MPH.

1.06 Contractor General Safety Requirements

- 1.06.01 Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- 1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- 1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- 1.06.04 When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- 1.06.05 Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- 1.06.06 Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- 1.06.07 For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- 1.06.08 All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. (NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)
- 1.06.09 **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- 1.06.10 Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- 1.06.11 Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- 1.06.12 All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- 1.07.01 Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (Richard Barnitz, 505-767-6826). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.
- 1.07.02 The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- 1.07.03 All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- 1.07.04 Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- 1.08.01 If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- 1.09.01 The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone

mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St: _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

Exhibit "C-1"
(please use C1 that BNSF provided on 11/5/2008)

EXHIBIT "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 91st Ave - 025401W
Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, with the City of Peoria, AZ for the performance of certain work in connection with the following project: widening of Grand Ave at 91st Ave (025401W). Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Peoria_ (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner

connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to *Railroad* payments related to the Federal Employers Liability Act or a *Railroad* Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage

- ♦ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ♦ _____'s statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ♦ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the *Railroad* as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ♦ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ♦ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ♦ Endorsed to remove any exclusion for punitive damages.
- ♦ No other endorsements restricting coverage may be added.
- ♦ The original policy must be provided to the *Railroad* prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against *Railroad* for all claims and suits against *Railroad*. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against *Railroad* for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against *Railroad* for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by *Railroad*. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and *Railroad* must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming *Railroad* as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of *Railroad*. If granted by *Railroad*, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all *Railroad* liabilities that would otherwise, in accordance with the provisions of this *Agreement*, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to *Railroad* an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify *Railroad* in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from *Railroad*, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO

PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

Any insurance policy must be written by a reputable insurance company acceptable to *Railroad* or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, *Railroad* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these

arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative (Richard Barnitz, 505-767-6826) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: _____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

Exhibit "D"

[INSERT ESTIMATE OF RAILROAD'S COSTS HERE]
(signal and track estimate)

TRACK ESTIMATE: \$28,218
SIGNAL ESTIMATE: \$93,015

TOTAL: \$121,233

EXHIBIT D-1

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY FHPM ESTIMATE FOR ARIZONA

LOCATION PEORIA

DETAILS OF ESTIMATE

PLAN ITEM : PSI025401W

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

INSTALL FLASHER WITH GATES AND RELOCATE 1 CANT AND 1 GATE AT 91ST AVE IN PEORIA, AZ. SOUTHWEST DIV., PHOENIX SUBDIV.,
L/S 7208, M.P. 178.44, DOT # 025401W.
MONTHLY POWER UTILITY COST CENTER :

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE
FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND
OVERHEAD.

***** SIGNAL WORK ONLY *****

THE STATE OF ARIZONA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

REVISED TO NEW PRICING LIST 09/04/03

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

SIGNAL FIELD LABOR - CAP	720.0 MH	16,025	
PAYROLL ASSOCIATED COSTS		12,980	
EQUIPMENT EXPENSES		4,166	
DA LABOR OVERHEADS		16,025	
INSURANCE EXPENSES		2,564	
TOTAL LABOR COST		51,760	51,760

MATERIAL			

CABLE	1.0 EA N	3,342	
CANTILEVER FOUNDATION	1.0 EA N	1,460	
FIELD MATERIAL	1.0 LS N	3,500	
FOUNDATION	2.0 EA N	970	
GATE KEEPER	1.0 EA N	1,775	
GATE MECH.	1.0 EA N	6,000	
LED LIGHT ADJUSTMENT	4.0 EA N	896	
LED LIGHT GATE KIT	1.0 EA N	366	
MISC WIRE MATERIAL	1.0 EA N	1,500	
USE TAX		1,324	
OFFLINE TRANSPORTATION		246	
TOTAL MATERIAL COST		21,379	21,379

OTHER			

CONCRETE/FOUNDATION CANT.	1.0 EA N	1,000	
CONTRACT ENGR.	1.0 EA N	6,000	
CONTRACT SIGNS AND CONES	1.0 EA N	3,500	
SURFACE ROCK	20.0 CY N	500	
TOTAL OTHER ITEMS COST		11,000	11,000
PROJECT SUBTOTAL			84,139
CONTINGENCIES			8,413
BILL PREPARATION FEE			463
GROSS PROJECT COST			93,015

LESS COST PAID BY BNSF

0

TOTAL BILLABLE COST

93,015

EXHIBIT D-2

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
AZ DEPT OF TRANSP

LOCATION PEORIA

DETAILS OF ESTIMATE

PLAN ITEM: PTR025401W

VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - EXTEND EXISTING CROSSING SURFACE OF 91ST AVENUE CROSSING, BY ONE PANEL
DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER DTD
LS 7208 - MP 178.4 - MAIN
PHOENIX SUBDIVISION
SOUTHWEST WEST DIVISION
RDM AREND - DE HEIDZIG

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.

PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

LENGTH (8 FEET) - WILL ONLY REQUIRE INSTALL OF CONCRETE CROSSING PANEL AND 10' TIES.
100% BILLABLE TO THE AZ DEPT OF TRANSPORTATION

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

FLAGGING - PUBLIC CROSSING - OPER	300.0 MH	6,818	
REPLACE PUBLIC CROSSING - TOTAL REHAB	8.0 MH	174	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	4.0 MH	87	
PAYROLL ASSOCIATED COSTS		4,868	
EQUIPMENT EXPENSES		3,751	
DA LABOR OVERHEADS		7,574	
INSURANCE EXPENSES		1,130	
TOTAL LABOR COST		24,402	24,402

MATERIAL			

CLIP, PANDROL, NO. E-2055 (FOR ALL WEIGHTS RA	40.0 EA	65	
TIE, TRK, 10FT, PRE-PLATED, PANDROL, 6IN, ROUND HOLE	10.0 EA **	1,200	
CONC 136 08-SEC WITH FILLER FOR WOOD	8.0 FT	1,315	
CONCRETE XING RAMP AND PANEL RESTRAINT,	1.0 ST	204	
MATERIAL HANDLING		138	
ONLINE TRANSPORTATION		19	
USE TAX		185	
OFFLINE TRANSPORTATION		15	
TOTAL MATERIAL COST		3,141	3,141

OTHER			

TOTAL OTHER ITEMS COST		0	0
PROJECT SUBTOTAL			27,543
CONTINGENCIES			395
BILL PREPARATION FEE			280
GROSS PROJECT COST			28,218
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			28,218

6

No Return
Receipt

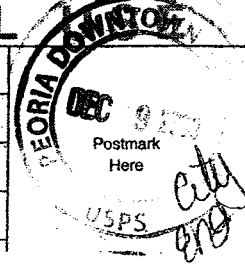
7007 1490 0000 4325 9357

U.S. Postal Service
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751



T
Robin Family Limited Partnership
46 Village Way 127
Port Ludlow, WA 98365

Se	
Sir	
or	
Cit	

PS Form 3800, August 2006

See Reverse for Instructions

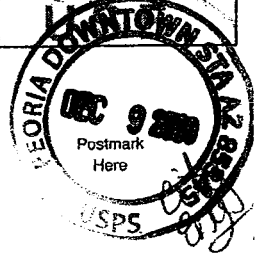
7007 1490 0000 4325 9364

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751



Peoria Storage Group LLC
18810 Montewood Drive
Saratoga, CA 95070

Se	
Sir	
or	
Cit	

PS Form 3800, August 2006

See Reverse for Instructions

7007 1490 0000 4325 9371

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751

Postmark Here

JML LLC
 P.O. Box 23970
 Phoenix, AZ 85063

PS Form 3800, August 2004 See Reverse for Instructions

SECTION ON DELIVERY

Printed Name) *Lisac*

Address) *Phoenix, AZ 85037*

C. Date of Delivery *2009*

Address different from item 1? ☐ Yes ☒ No

Delivery address below:

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.

Delivery? (Extra Fee) ☐ Yes

25 9371

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7007 1490 0000 4325 9401

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751

Postmark Here

City of Peoria - Fire Department
 Administration Division
 Attn: Ms. Beverly Blackwell
 8351 W. Cinnabar Ave
 Peoria, AZ 85345

PS Form 3800, August 2004 See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

Signature *[Signature]*

Received by (Printed Name) *[Signature]*

C. Date of Delivery *12/11/09*

Address different from item 1? ☐ Yes ☒ No

Delivery address below:

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.

Delivery? (Extra Fee) ☐ Yes

325 9401

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7007 1490 0000 4325 9265

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751

Postmark Here

Melvin Thomas
 Burlington Northern Santa Fe RR
 740 E. Carnegie Drive
 San Bernardino, CA 92408

PS Form 3800, August 2004 See Reverse for Instructions

SECTION ON DELIVERY

Printed Name) *Loko*

C. Date of Delivery *12/11/09*

Address different from item 1? ☐ Yes ☒ No

Delivery address below:

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.

Delivery? (Extra Fee) ☐ Yes

7007 1490 0000 4325 9418

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

MR. DOUG KING
 PEORIA UNIFIED SCHOOL DIST.
 10721 N. 95TH AVE
 PEORIA, AZ 85345

PS Form 3800, August 2006 See Reverse for Instructions

SECTION ON DELIVERY

Printed Name) *JA BETH* C. Date of Delivery *12-10-09*

Press different from item 1? ☐ Yes ☒ No

delivery address below:

☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.

delivery? (Extra Fee) ☐ Yes

25 9418

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7007 1490 0000 4325 9272

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Robert Travis
 Arizona Department of Transportation
 205 S. 17th Avenue, MD 618E
 Phoenix, AZ 85007

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SECTION ON DELIVERY

Printed Name) *Martin Monda* C. Date of Delivery *DEC 11 2009*

Press different from item 1? ☐ Yes ☒ No

delivery address below:

☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.

delivery? (Extra Fee) ☐ Yes

325 9272

7007 1490 0000 4325 9289

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Mr. Bobby Garza
 Arizona Public Service
 P.O. Box 53999, MS 3876
 Phoenix, AZ 85072

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SECTION ON DELIVERY

Printed Name) *Bobby Garza* C. Date of Delivery *DEC 10 2009*

Press different from item 1? ☐ Yes ☒ No

delivery address below:

☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.

delivery? (Extra Fee) ☐ Yes

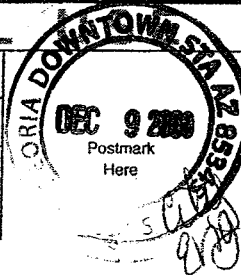
7007 1490 0000 4325 9340

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751



Sun City RV Sales
10222 Sante Fe Drive
Sun City, AZ 85345

SECTION ON DELIVERY

Printed Name) John F. Marcell ☒ Agent ☐ Addressee
C. Date of Delivery 02/10/09
Address different from item 1? ☐ Yes
Delivery address below: ☐ No

Mail ☐ Express Mail
Return Receipt for Merchandise ☐
C.O.D. ☐
Delivery? (Extra Fee) ☐ Yes

25 9340

PS Form 3800, August 2006

See Reverse for Instructions

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

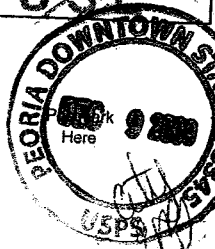
7007 1490 0000 4325 9388

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751
Total Postage & Fees	\$



MR. ROBERT RUSSELL
OSP ENGINEER
INTEGRA TELECOM
3540 E. BASELINE RD, #100
PHOENIX, AZ 85042

SECTION ON DELIVERY

Printed Name) John Aguirre ☒ Agent ☐ Addressee
C. Date of Delivery 12/11
Address different from item 1? ☐ Yes
Delivery address below: ☒ No

Mail ☐ Express Mail
Return Receipt for Merchandise ☐
C.O.D. ☐
Delivery? (Extra Fee) ☐ Yes

25 9388

See Reverse for Instructions

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

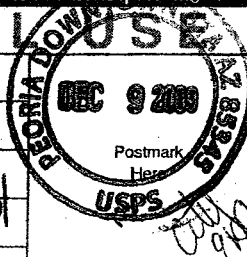
7007 1490 0000 4325 9326

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	751



Mr. Tony Belford
Southwest Fibernet
2920 W. Directors Row
Salt Lake City, UT 84104

SECTION ON DELIVERY

Printed Name) John Bentley ☒ Agent ☐ Addressee
C. Date of Delivery
Address different from item 1? ☐ Yes
Delivery address below: ☐ No

Mail ☐ Express Mail
Return Receipt for Merchandise ☐
C.O.D. ☐
Delivery? (Extra Fee) ☐ Yes

25 9326

PS Form 3800, August 2006

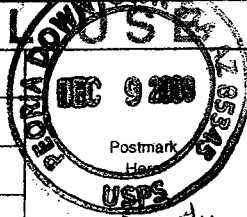
See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
 Certified Fee
 Return Receipt Fee
 (Endorsement Required)
 Restricted Delivery Fee
 (Endorsement Required)



Mr. Ron Pint
 Cox Communications
 1550 W. Deer Valley Road
 Phoenix, AZ 85027

SECTION ON DELIVERY

Jose Gillard ☐ Agent
☐ Addressee
 Printed Name) C. Date of Delivery
Jose Gillard 12/11/03
 Address different from item 1? ☐ Yes
 Delivery address below: ☐ No

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
 Mail ☐ C.O.D.
 Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

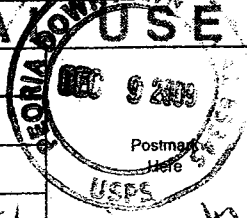
102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
 Certified Fee
 Return Receipt Fee
 (Endorsement Required)
 Restricted Delivery Fee
 (Endorsement Required)



Mr. John Settembre
 Qwest Communications
 135 W. Orion Street
 Tempe, AZ 85283

SECTION ON DELIVERY

John Haggar ☐ Agent
☐ Addressee
 Printed Name) C. Date of Delivery
John Haggar 12-11-03
 Address different from item 1? ☐ Yes
 Delivery address below: ☐ No

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
 Mail ☐ C.O.D.
 Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

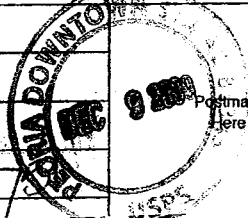
102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
 Certified Fee
 Return Receipt Fee
 (Endorsement Required)
 Restricted Delivery Fee
 (Endorsement Required)



Mr. Hector Buenrostro
 Salt River Project
 221 N. 79th Avenue
 Tolleson, AZ 85043

SECTION ON DELIVERY

Jones ☐ Agent
☐ Addressee
 Printed Name) C. Date of Delivery
Jones 12/11/03
 Address different from item 1? ☐ Yes
 Delivery address below: ☐ No

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
 Mail ☐ C.O.D.
 Delivery? (Extra Fee) ☐ Yes

7007 1490 0000 4325 9395

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL

Postage \$
 Certified Fee
 Return Receipt Fee (Endorsement Required)
 Restricted Delivery Fee (Endorsement Required)

City of Peoria Police Department
 Administration Division
 Attn: Ms. Barbara Benavidez
 8351 W. Cinnabar Ave
 Peoria, AZ 85345

Postmark Here

SECTION ON DELIVERY

☒ Agent
☐ Addressee

Printed Name) C. Date of Delivery
 2915 12/11

Address different from item 1? ☐ Yes
 delivery address below: ☐ No

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.
 Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7007 1490 0000 4325 9333

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL

Postage \$
 Certified Fee
 Return Receipt Fee (Endorsement Required)
 Restricted Delivery Fee (Endorsement Required)

Ms. Claudia Gantert
 Southwest Gas
 9 S. 43rd Ave, MC 420-586
 Phoenix, AZ 85009

Postmark Here

SECTION ON DELIVERY

☒ Agent
☐ Addressee

Printed Name) C. Date of Delivery
 12-11-9

Address different from item 1? ☐ Yes
 delivery address below: ☐ No

Mail ☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.
 Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7

AFFIDAVIT OF PUBLICATION

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Carolyn Castillo of
PEORIA TIMES

A newspaper of general circulation published and printed in the city of Glendale, County of Maricopa, State of Arizona, do solemnly swear that a copy of the notice, in the matter of

BNSF RR-02635B-09-527

City Attorneys Office

City of Peoria

COPY

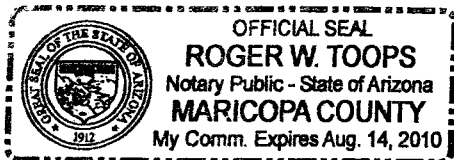
As per clipping attached, was published weekly in the regular and entire edition of the said newspaper, and not in any supplement hereof, for a period of 1 consecutive week(s), as follows, to-wit:
12/18/09

(s) Carolyn Castillo

Subscribed and sworn to before me, this
18th day of December (year) 2009.

(s) [Signature]
Notary Public

My commission expires:



RECEIVED
CITY CLERK'S OFFICE
2009 DEC 23 PM 4:23

Pueblo Publishers, Inc7122 North 59th Avenue
Glendale, AZ 85301**INVOICE**

Invoice Number: 130535

Invoice Date: Dec 17, 2009

Page: 1

Voice: (623) 842-6000

Fax: (623) 842-6017

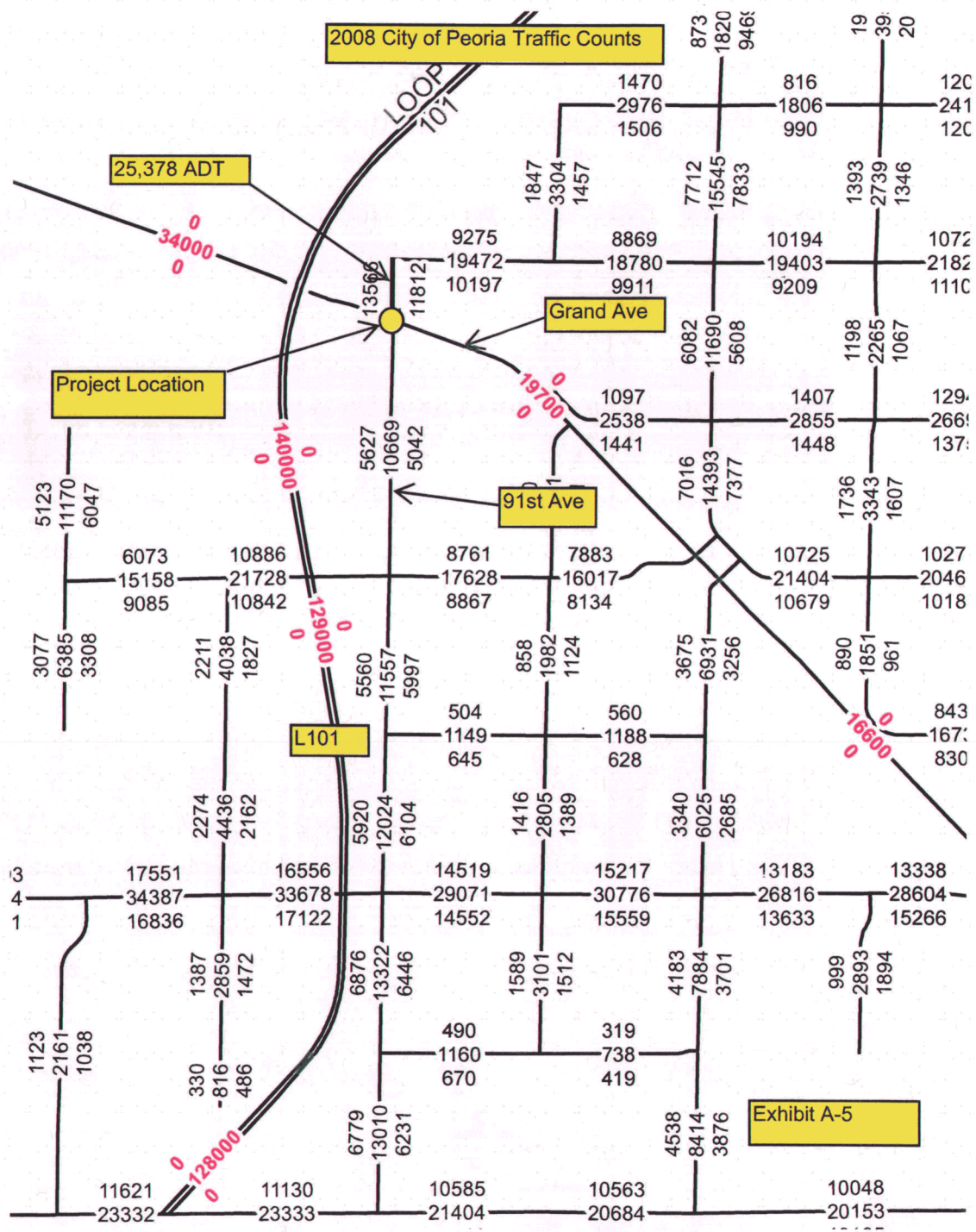
Bill To:CITY OF PEORIA - CITY CLERK'S
OFFICE - NATALIE GILSTRAP
8401 W. MONROE ST.
PEORIA, AZ 85345**Ship To:**

Customer ID	Customer PO	Payment Terms	
156		Net 30 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
LGL	Courier		1/16/10

Quantity	Item	Description	Unit Price	Amount
5.50	PT	HEARING - BNSF RR - 02635B-09-527 A	1.50	8.25
Subtotal				8.25
Sales Tax				0.15
Total Invoice Amount				8.40
Payment/Credit Applied				
TOTAL				8.40

Check/Credit Memo No:

RECEIVED
CITY CLERK'S OFFICE
2009 DEC 23 PM 4:22PROCESS
For Payment
DEC 23 2009
Kathy
FINANCE



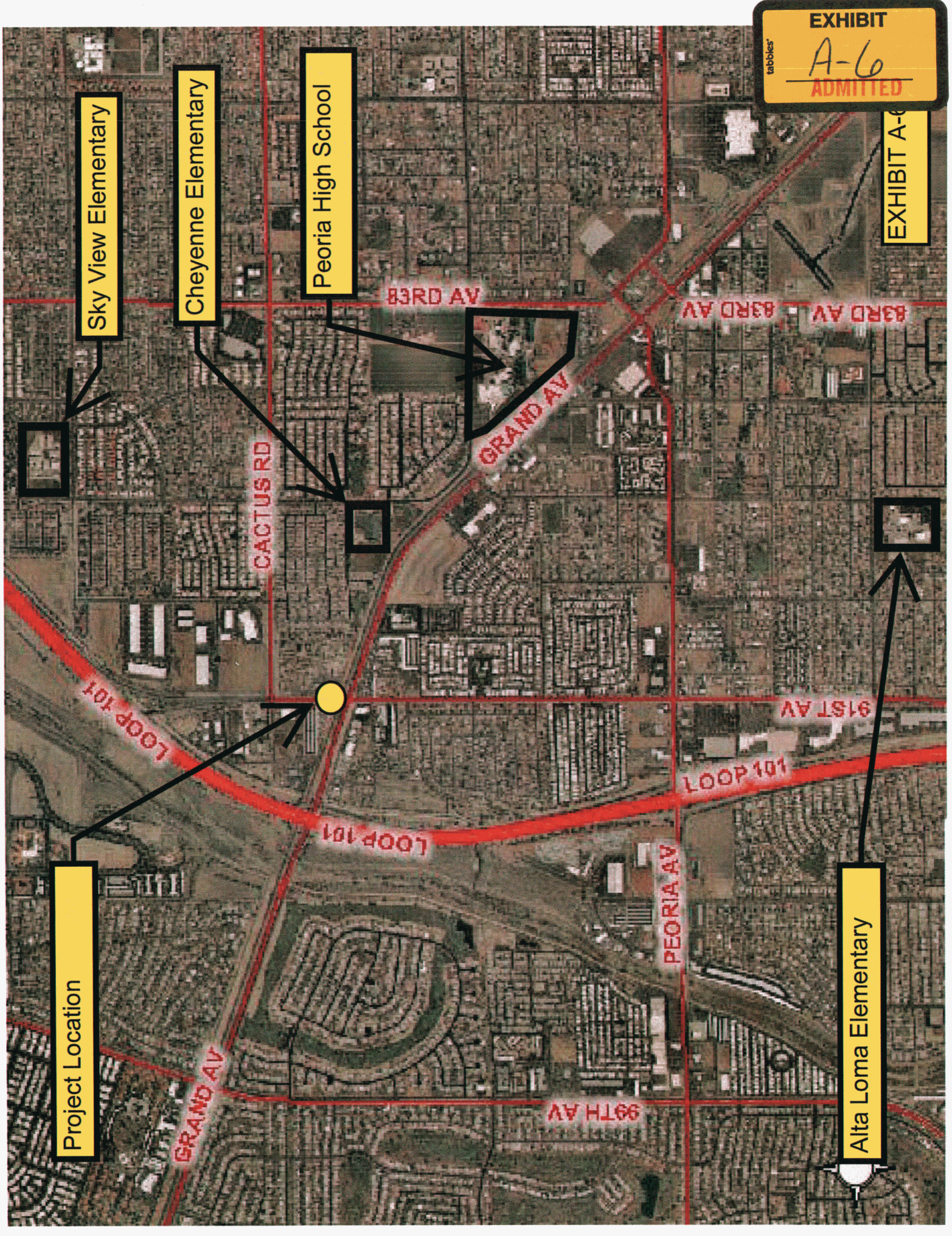


EXHIBIT
A-6
ADMITTED

Sky View Elementary

Cheyenne Elementary

Peoria High School

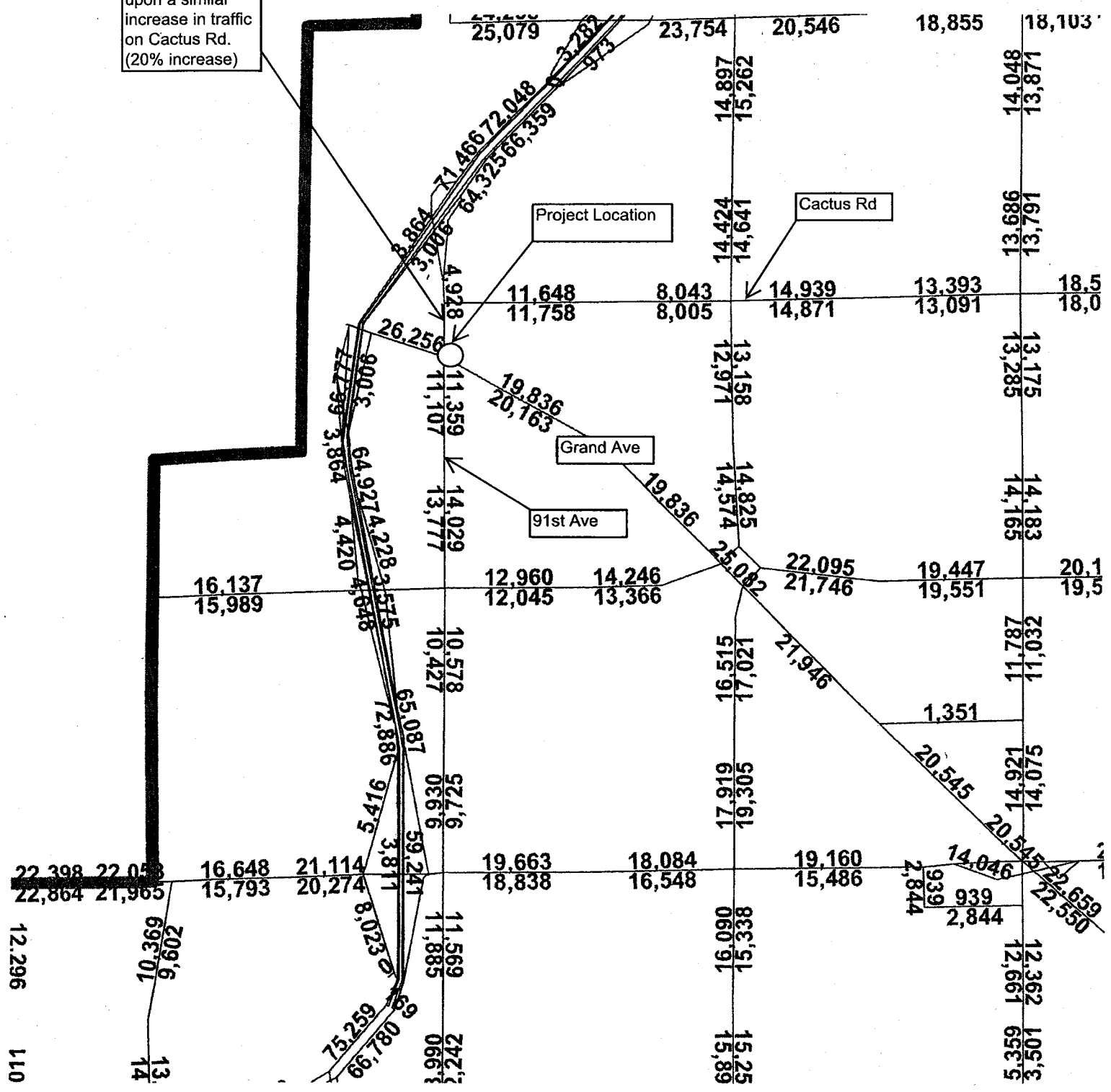
EXHIBIT A-6

Project Location

Alta Loma Elementary

30,500 VPD
would be a
projected number
(2030) based
upon a similar
increase in traffic
on Cactus Rd.
(20% increase)

MAG 2030 Traffic Projections



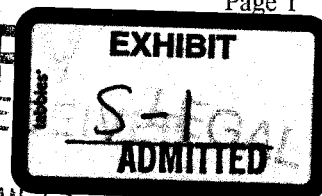
Hold as backup



STAFF MEMORANDUM

RECEIVED

JAN 13 2010

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

2010 JAN 13 P 4:30

AZ CORP. COMMISSION
DOCKET CONTROL

To: THE COMMISSION

From: Steven M. Olea
Interim Director
Safety Division

Date: January 14, 2010

RE: IN THE MATTER OF THE APPLICATION OF THE CITY OF PEORIA TO UPGRADE AN EXISTING CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE RAILROAD AT 91ST AVENUE IN THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, DOT NO. 025-401-W.

DOCKET NO. RR-02635B-09-0529

Background

On November 17, 2009, the City of Peoria ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe Railroad ("Railroad") to upgrade an existing crossing at 91st Avenue in the City of Peoria, Maricopa County, Arizona at AAR/DOT No. 025-401-W.

Flashing lights and gates were first installed at 91st Avenue in 1974. Commission Decision No. 61119 dated September 16, 1998, approved additional upgrades to the existing warning devices that included cantilevers with flashing lights and raised medians with automatic gates.

The following is a break down of the crossing in this application, including information about the crossing that was provided to Staff by the City.

Geographical Information

Ninety-First Avenue intersects the Railroad's tracks approximately 150 feet northeast of the Grand Avenue and 91st Avenue intersection within the City. Ninety-First Avenue runs in a north-south trajectory with the rail line traversing 91st Avenue in a north-west to south-east direction. (See Appendix "A")

Ninety-First Avenue

The 91st Avenue crossing improvement project is part of a joint effort between the Arizona Department of Transportation (ADOT) and the City to widen Grand Avenue to three thru lanes in each direction from 99th Avenue to 83rd Avenue. As part of this project, improvements at the existing 91st Avenue and Grand Avenue intersection will include additional turn lanes in all directions along with new traffic signals. During the design process, ADOT determined that additional upgrades to the 91st Avenue highway/rail crossing would be required to safely accommodate northbound 91st Avenue vehicular turning movements. The upgrades include: relocation of existing curbs, sidewalk ramps, and installation of a new pedestrian

sidewalk all within the existing Railroad's right-of-way. In addition, the existing railroad crossing warning devices (gates, flashing lights and cantilever) would need to be relocated as part of the crossing improvements. Also, one new automatic gate with flashing lights will replace an existing signal with only flashing lights, along with the installation of new concrete surfaces. The proposed measures are consistent with safety measures employed at similar at-grade crossings in the state. The estimated cost of the proposed railroad crossing upgrade is \$121,233. The crossing improvements are being funded by the Federal Highway Administration (FHWA) through the American Reinvestment and Recovery Act.

Traffic data for 91st Avenue was provided by ADOT. The most recent data shows the Average Daily Traffic ("ADT") for 2008 to be 25,378 vehicles per day ("vpd"). No projected ADT's were provided. The current Level of Service ("LOS") for 91st Avenue is LOS F. The projected LOS after the proposed improvements will be LOS D.

The American Association of State Highway and Transportation Officials Geometric Design of Highways and Streets, 2004, states that the LOS characterizes the operating conditions on a facility in terms of traffic performance measures related to speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. This is a measure of roadway congestion ranging from LOS A--least congested--to LOS F--most congested. LOS is one of the most common terms used to describe how "good" or how "bad" traffic is projected to be.

The posted speed limit on 91st Avenue is 35 mph. Staff records, as well as Federal Railroad Administration accident/incident records indicate one accident at this crossing on July 11, 1985 with no injuries or fatalities.

Alternative routes from this crossing are as follows; to the northwest approximately 0.3 miles is SR 101 a grade separation, and to the southeast 1.25 miles is Peoria Avenue, an at-grade crossing.

Train Data

Data provided by the City regarding train movements through this crossing are as follows:

Train Count: 13 trains per day on average (all freight trains/no passenger trains)

Train Speed: 25 mph

Thru Freight/Switching Moves: All movements through this crossing are thru freight. (No switching operations)

Schools and Bus Routes

There are several schools located within a three mile radius of the crossing, they are:

Elementary Schools:

- ✓ Alta Loma Elementary, 9750 N. 87th Avenue
- ✓ Cheyenne Elementary, 11806 N. 87th Avenue
- ✓ Sky View Elementary, 8624 W. Sweetwater Avenue

High Schools:

- ✓ Peoria High School, 11200 83rd Avenue

According to Leanne Baker, the Routing Manager for the Peoria Unified School District, a total of 126 bus crossings occur each school day. However, not all school bus crossings have children aboard.

Hospitals

The nearest hospital or health facility to the 91st Avenue crossing is as follows;

- ✓ Banner Thunderbird Hospital, five miles to the northeast.
- ✓ Boswell Memorial Hospital, 2.2 miles to the west.

Per the City, 91st Avenue is not the main emergency route for this area; 83rd Avenue is the main route.

Hazardous Materials

The City gave the following response when asked about hazardous materials crossing this crossing:

No known data on scheduled hazardous material traffic. Incidental use expected. No businesses are in the area that would generate or receive hazardous materials. However, Northbound 91st Avenue is used to access Northbound SR 101.

Zoning

Staff requested the City provide information regarding the type of zoning in areas adjacent to the crossing. The following was the City's response:

Current zoning is commercial and light industrial. With low density residential ½ mile away. No changes anticipated

Spur Lines

The City gave the following answer regarding spur lines located in the area:

No known spur/ at-grade crossing removals in a 10 mile radius within the last 3 years.

FHWA Guidelines Regarding Grade Separation

The FHWA Railroad-Highway Grade Crossing Handbook (Revised Second Edition August 2007) provides nine criteria for determining whether highway-rail crossings should be considered for grade separation or otherwise eliminated across the railroad right of way. The Crossing Handbook indicates that grade separation or crossing elimination should be considered whenever one or more of the nine conditions are met. The nine criteria are applied to this crossing application as follows:

		91 st Avenue
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
The highway is otherwise designed to have full controlled access	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural; or passenger train crossing exposure exceeds 800k in urban or 200k in rural	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	N/A ¹
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No

¹ N/A = Not Applicable

Vehicular Delays at Crossings

Based on the current single track configuration, the City gave the following response about delay time for vehicles at the crossing in this application. The delay time is measured from the point that the warning devices are activated at the crossing to the time after the train has cleared the crossing and the warning devices are reset.

Per City of Peoria Staff, minimal delays totaling less than 2 or 3 minutes each. Trains are not observed to stop and block the crossing.

Staff has determined by using a conservative estimate of a three minute delay per train (13 trains per day), the total vehicle delay would be 39 minutes per day. Current delays fall well below the FHWA recommended threshold of 40 vehicle hour delays per day.

Another commonly used measure outlined in the FHWA Guidelines; the so-called Crossing Exposure Index (which is simply the product of the number of trains per day multiplied by the number of vehicles crossing daily) is not currently met at this crossing. It should be noted that the criteria identified in the FHWA material are not mandates, but guidelines established by the FHWA, which serve to alert those having jurisdiction that potential problems may arise.

Grade Separation

With regard to grade separating this crossing, the City gave the following response:

Lack of connectivity between Grand Avenue and 91st avenue would have severely impacted regional traffic flows between SR 101, US 60 Grand Ave, Cactus Road, etc. Numerous properties and businesses would need to be purchased and relocated to allow the US 60 to be shifted to the south to allow for connectivity. Numerous utilities and other financial hurdles would have to be met for a grade separation and connected interchange.

Estimated cost to grade separate would be a minimum of \$30-40 million dollars due to excessive embankment, utility relocation, right of way purchases and interchange needed with US 60/ Grand Avenue.

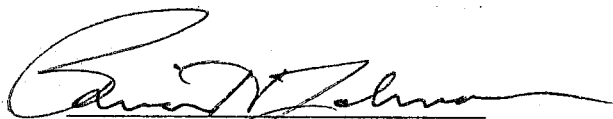
Staff has utilized the FHWA Guidelines to determine the potential need for grade separation at this crossing. Based on existing conditions, the crossing in this application meets none of the nine criteria for consideration of grade separation. It is highly unlikely that any future projections would meet any of the nine criteria, however, future traffic projections and trains counts were not available. Therefore, Staff does not recommend a grade separation at this time.

Crossing Closure

The area surrounding this crossing is highly developed with both commercial and industrial businesses. To close this crossing would have a negative affect on many of the local businesses. Therefore, Staff would not recommend closure of this crossing at this time.

Staff Conclusions

Having reviewed all applicable data, Staff supports the City's application. Staff believes that the upgrades are in the public interest and are reasonable. Staff believes that the measures proposed by the City are consistent with other similar at-grade crossings in the State and will provide for the public's safety. Therefore, Staff recommends approval of the City's application.



Brian H. Lehman
Railroad Safety Supervisor
Safety Division

Originator: BHL

COPIES of the foregoing mailed
this 14th day of January, 2010 to:

Docket No. RR-02635B-09-0529

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Richard Costa
City of Peoria
8401 W. Monroe Street
Peoria, Az. 85345

Patrick Black
Fennemore Craig
3003 N. Central Ave. Ste. 2600
Phoenix, Az. 85012

Robert Travis, PE
State Railroad Liaison
Arizona Department of Transportation
205 S 17th Ave, Room 357
MD 618E
Phoenix, AZ 85007

Melvin Thomas
Public Projects
BNSF
740 E. Carnegie Drive
San Bernardino, Ca. 92408

Kelly Roy
MCDOT
Utility Project Coordinator
2901 West Durango St.
Phoenix, Az. 85009-6357

